

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WSOU INVESTMENTS LLC d/b/a BRAZOS
LICENSING AND DEVELOPMENT, a
Delaware limited liability company,

Plaintiff,

v.

F5 NETWORKS, INC., a Washington
Corporation,

Defendant.

No. 2:20-cv-01878-BJR
No. 2:21-cv-00123-BJR
No. 2:21-cv-00124-BJR
No. 2:21-cv-00125-BJR
No. 2:21-cv-00126-BJR

**AMENDED JOINT STATUS REPORT
AND DISCOVERY PLAN**

Pursuant to Fed. R. Civ. P. 26(f) and LCR 26(f), the parties, by and through their undersigned counsel, hereby respectfully submit their Amended Joint Status Report and Discovery Plan¹ as follows:

1. A statement of the nature and complexity of the case:

Plaintiff: WSOU Investments LLC d/b/a Brazos Licensing and Development (“WSOU”) is a Delaware limited liability company that maintains its principal place of business at 605 Austin Avenue, Suite 6, Waco, Texas 76701. WSOU is the owner by assignment of all right, title, and interest in U.S. Patent No. 7,953,884 entitled *Method and Apparatus for Overload Control and*

¹ The original Report erroneously provided that responsive claim construction briefs would be due 1/6/22 when the parties intended that deadline to be 1/13/22.

1 *Audit in a Resource Control and Management System* (“the ’884 Patent”), U.S. Patent No.
 2 7,860,000 entitled *Apparatus, Method and Computer Program Products Providing Estimation of*
 3 *Activity Factor and Enhanced Radio Resource Management*, (“the ’000 Patent”), U.S. Patent No.
 4 9,584,330 entitled *Method for Generating a Real Time Billing Information in a Packet Switching*
 5 *Based Network and Network Element* (“the ’330 Patent”), U.S. Patent No. 8,248,940 entitled
 6 *Method and Apparatus for Targeted Content Delivery Based on Internet Video Traffic Analysis*
 7 (“the ’940 Patent”), and U.S. Patent No. 7,548,945 entitled *System, Network Device, Method, and*
 8 *Computer Program Product for Active Load Balancing Using Clustered Nodes as Authoritative*
 9 *Domain Name Servers* (“the ’945 Patent”) (collectively, the “Patents-in-Suit”).

10 WSOU filed five separate Complaints for Patent Infringement against Defendant F5
 11 Networks, Inc. (“F5”) based on F5’s direct and indirect infringement, either literally or under the
 12 doctrine of equivalents, of the Patents-in-Suit by making, using, offering to sell, selling, marketing,
 13 testing, and/or importing into the United States infringing products, including, but not limited to, F5’s
 14 BIG-IP System, BIG-IP Local Traffic Manager, BIG-IP Policy Enforcement Manager, and BIG-IP
 15 DNS. *See* Case Nos. 2:20-cv-01878-BJR (the ’884 Patent), 2:21-cv-00123-BJR (the ’000 Patent),
 16 2:21-cv-00124-BJR (the ’330 Patent), 2:21-cv-00125-BJR (the ’940 Patent), and 2:21-cv-00126-
 17 BJR (the ’945 Patent). Despite actual knowledge of the Patents-in-Suit since at least November 6,
 18 2020,² F5 continues to make, use, offer to sell, sell, market, test, and/or import into the United
 19 States infringing products, and continues to distribute product literature and website materials
 20 inducing end users and others to use its products in customary and intended manners that infringe
 21
 22

23 ² On September 15, 2020, WSOU filed four separate Complaints for Patent Infringement against
 24 F5 alleging infringement of the ’000 Patent, ’330 Patent, ’940 Patent, and ’945 Patent in the United
 25 States District Court for the Eastern District of Virginia, and on November 6, 2020, WSOU filed
 26 another Complaint for Patent Infringement against F5 alleging infringement of the ’884 Patent in
 27 the United States District Court for the Eastern District of Virginia. Dkt. 50 at p. 1-2. On
 November 6, 2020, F5 waived the service of summons in each of these actions. *Id.* at p. 2. Hence,
 F5 has had actual knowledge of the Patents-in-Suit at least as of November 6, 2020.

the Patents-in-Suit. F5 continues to directly and indirectly infringe, either literally or under the doctrine of equivalents, the Patents-in-Suit.

Defendant: Each of the five actions is a unique patent infringement suit. As WSOU acknowledges in its statement regarding related cases below, the cases involve different patents from different families, and different accused products and methods, and thus do not involve common questions of law and fact. None of the Patents-in-Suit are related. Combined, there are 107 asserted claims across the five Patents-in-Suit. In each case, WSOU alleges that different technical functions or features of different F5 products infringe one of the Patents-in-Suit.

F5 answered all five complaints on February 26, 2021, and asserted counterclaims for declaratory judgment of non-infringement and invalidity of each of the Patents-in-Suit. There are many disputed issues, including whether the Patents-in-Suit are invalid, whether any F5 product infringes any valid claim of any Patent-in-Suit, the scope and meaning of disputed claim terms, whether WSOU is entitled to damages, and whether WSOU has complied with the notice and patent marking requirements.

2. A proposed deadline for the joining of additional parties:

The parties do not foresee a need to join any additional parties.

3. Consent to assignment of this case to a full-time United States Magistrate Judge to conduct all proceedings:

The parties do not consent to assignment of this case to a full-time United States Magistrate Judge.

4. A discovery plan that states, by corresponding paragraph letters (A, B, etc.), the parties' views and proposals on all items in Fed. R. Civ. P. 26(f)(3):

(A) Initial Disclosures: The parties exchanged their Initial Disclosure Statements on February 26, 2021 in Case No. 2:20-cv-01878-BJR. The parties will exchange initial disclosures

for the remaining cases, Nos. 2:21-cv-00123-BJR, 2:21-cv-00124-BJR, 2:21-cv-00125-BJR, and 2:21-cv-00126-BJR, on **March 23, 2021**.³

(B) Subjects, timing, and potential phasing of discovery: The parties anticipate that at discovery will be sought regarding the allegedly infringing products and/or methods, alleged prior art, ownership and licensing of the Patents-in-Suit, damages, and defenses. The parties agree to the contention and claim construction discovery phasing that the Local Patent Rules impose. *See* Local Patent Rule 112. The parties also propose that expert discovery should be phased after fact discovery, as shown in the proposed schedules below. The parties agree to the following schedule:

Event	
Initial Disclosures	2/26/2021: -1878 3/23/2021: -123, -124, -125, and -126
Joint Status Report	3/5/2021
Disclosure of Asserted Claims and Infringement Contentions	4/8/2021
Non-Infringement and Invalidity Contentions	6/17/2021
Document Production Accompanying Invalidity Contentions	6/17/2021
Exchange of Proposed Terms and Claim Elements for Construction	7/15/2021

³ The current deadlines to exchange Initial Disclosure Statements are as follows:

- February 26, 2021 in Case No. 2:20-cv-01878-BJR pursuant to the Order Regarding Initial Disclosures and Joint Status Report entered on January 22, 2021 as Dkt. 47 in that case;
- March 3, 2021 in Case No. 2:21-cv-00123-BJR pursuant to the Order Regarding Initial Disclosures and Joint Status Report entered on February 20, 2021 as Dkt. 26 in that case;
- March 18, 2021 in Case No. 2:21-cv-00125-BJR pursuant to the Order Regarding FRCP 26(f) Conference, Initial Disclosures and Joint Status Report entered on February 11, 2021 as Dkt. 30 in that case;
- March 18, 2021 in Case No. 2:21-cv-00126-BJR pursuant to the Order Regarding Initial Disclosures and Joint Status Report entered on February 11, 2021 as Dkt. 28 in that case; and
- March 23, 2021 in Case No. 2:21-cv-00124-BJR pursuant to the Order Regarding Initial Disclosures and Joint Status Report entered on February 16, 2021 as Dkt. 36 in that case.

AMENDED JOINT STATUS REPORT AND DISCOVERY PLAN – 4
(Case Nos. 2:20-cv-01878-BJR, 2:21-cv-00123-BJR, 2:21-cv-00124-BJR,
2:21-cv-00125-BJR, 2:21-cv-00126-BJR)

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Event	
Exchange of Preliminary Claim Construction and Extrinsic Evidence	8/19/2021
Joint Claim Construction and Prehearing Statement	9/30/2021
Expert Disclosure on Claim Construction	9/30/2021
Rebuttal Expert Disclosure on Claim Construction	11/11/2021
Completion of Claim Construction Discovery	12/2/2021
Opening Claim Construction Brief	12/16/2021
Responsive Claim Construction Brief	1/13/2022
Claim Construction Hearing	As ordered by the Court
Advice of Counsel Defense Disclosures and Accompanying Document Production	Within 14 days of the <i>Markman</i> Order
Amend Pleadings Without Leave of Court	Within 30 days of the <i>Markman</i> Order
Close of Fact Discovery	45 days after the <i>Markman</i> Order
Opening Expert Reports	8 weeks after close of fact discovery
Rebuttal Expert Reports	8 weeks after Opening Expert Reports
Close of Expert Discovery	4 weeks after Rebuttal Expert Reports
Dispositive Motions and <i>Daubert</i> Motions	30 days after close of expert discovery
Opposition to Dispositive Motions and <i>Daubert</i> Motions	21 days after opening dispositive and <i>Daubert</i> motions
Replies in Support of Dispositive Motions and <i>Daubert</i> Motions	14 days after dispositive and <i>Daubert</i> oppositions
Jury Trial	90 days after decisions on dispositive and <i>Daubert</i> motions are issued

(C) Electronically stored information: The parties are discussing the Court's Model Agreement Regarding Discovery of Electronically Stored Information ("ESI"), and will submit a proposed ESI Order.

(D) Privilege issues: The parties expect to address this issue together with discussions related to confidential information and the entry of a Protective Order, and further expect to agree on a procedure for handling the inadvertent production of privileged information.

(E) Proposed limitations on discovery:

The parties agree to the following limitations on discovery:

- Interrogatories:
 - 15 common interrogatories per side
 - 25 case-specific interrogatories per side
- Requests for Admission: WSOU does not propose to modify any of the permissible discovery set forth in FRCP 36
- Requests for Production: WSOU does not propose to modify any of the permissible discovery set forth in FRCP 34
- Fact Depositions:
 - 80 hours per side (party only)
 - For depositions where an interpreter is required, the time allotment available under this order is increased by 50% to account for the translation time (*e.g.*, a 7-hour deposition is increased to 10.5 hours if using an interpreter). Additionally, the defending party may provide a check interpreter at that party's cost.
- Expert Depositions: 7 hours per report⁴

(F) The need for any discovery-related orders: At this time, the parties do not currently anticipate the need for discovery-related orders other than a Protective Order and ESI Order.

5. The parties' views, proposals, and agreements, by corresponding paragraph letters (A, B, etc.), on all items set forth in Local Civil Rule 26(f)(1), which includes the following topics:

⁴ For example, if a single technical expert submits reports on both infringement and invalidity, he or she may be deposed for up to 14 hours in total. If the expert opines in numerous cases, then his or her deposition will be limited to 7 hours per report for the first case, and an additional 5 hours for each additional case in which he or she provides a report. For clarity, if a single technical expert submits reports on both infringement and invalidity, he or she may be deposed for an additional 10 hours for each additional case in which he or she provides such reports.

(A) Prompt case resolution: The parties are dedicated to a prompt resolution of this case to the extent possible and shall engage in settlement discussions when appropriate.

(B) Alternative dispute resolution: The parties will consider the use of Alternative Dispute Resolution after the Court issues its *Markman* Order.

(C) Related cases:

Plaintiff: On February 10, 2021, F5 filed a Notice of Related Cases “relating” the cases in the chart below. However, WSOU does not believe that these cases are “related” under the meaning of that term in the Western District of Washington because they involve different patents from different families, and different accused products and methods, and thus do not involve common questions of law and fact.

	Case Caption	Patent-in-Suit	Accused Product
1	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00123-BJR	U.S. Patent No. 7,860,000	BIG-IP Local Traffic Manager
2	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> Case No. 2:21-cv-00124-BJR	U.S. Patent No. 9,584,330	BIG-IP Policy Enforcement Manager
3	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> , Case No. 2:21-cv-00125-BJR	U.S. Patent No. 8,248,940	BIG-IP Policy Enforcement Manager
4	<i>WSOU Investments, LLC d/b/a Brazos Licensing and Development v. F5 Networks, Inc.</i> Case No. 2:21-cv-00126-BJR	U.S. Patent No. 7,548,945	BIG-IP DNS

Defendant: Because each of the five cases concern identical parties and questions of patent infringement and, as reflected in this joint report, coordinating discovery and pretrial procedures limits the risk of burdensome duplication of labor and expenses by the Court and the parties, F5 maintains the cases are “related” under LCR 3(g) and are best litigated in front of a

single judge. F5 agrees with WSOU that the cases involve different patents from different families, and different accused products and methods, and thus do not involve common questions of law and fact.

(D) Discovery management: The parties propose certain limitations on discovery as set forth in Section 4(F) above. The parties agree that:

- All documents shall be served by electronic mail, to counsel of record, unless electronic service is not practical or is unduly burdensome in which event the parties shall cooperate to promptly determine, by the date service is due, the most expeditious manner possible to achieve service such as through FTP or other secure electronic delivery;
- Service shall be made before midnight Pacific Standard Time for all purposes including calculating and meeting deadlines; and
- Discovery received from third parties by propounding party shall be shared with non-propounding party.

(E) Anticipated discovery sought: See Section 4(B) above. The parties shall seek discovery as directed, *inter alia*, by the Local Patent Rules.

(F) Phasing of motions: See Section 4(B) above. The parties do not anticipate filing early dispositive motions, but reserve their respective rights to do so.

(G) Preservation of discoverable information: The parties represent that they are aware of their obligations with respect to preserving discoverable information.

(H) Privilege issues: See Section 5(D) above.

(I) Model Protocol for Discovery of ESI: See Section 4(C) above.

(J) Alternatives to Model Protocol: See Section 4(C) above.

6. The date by which discovery can be completed:

See Section 4(B) above.

7. Whether the case should be bifurcated by trying the liability issues before the damages issues, or bifurcated in any other way:

At this time, the parties do not believe bifurcation is appropriate for this action.

8. Whether the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of economy:

The parties do not believe that the pretrial statements and pretrial order should be dispensed with in whole or in part.

9. Any other suggestions for shortening or simplifying the case:

The parties propose providing a tutorial to the Court to understand the technology claimed by the Patents-in-Suit. Such tutorial should be scheduled at the time of the *Markman* hearing or at any other time as the Court desires.

The parties agree that after contentions are served and before claim construction terms are exchanged, the parties will confer on whether the number of claims at issue can be narrowed before claim construction proceedings begin. The parties also agree to confer on further narrowing the number of claims at issue and the number of asserted prior art references after the Court issues its *Markman* order, before expert reports.

10. The date the case will be ready for trial:

See Section 4(B) above. The case will be ready for trial 90 days after rulings on dispositive and *Daubert* motions.

11. Whether the trial will be jury or non-jury:

The parties request a jury trial.

12. The number of trial days required:

The estimated length of trial is 7 days.

13. The names, addresses, and telephone numbers of all trial counsel:

For WSOU, trial counsel includes:

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14. The dates on which the trial counsel may have complications to be considered in setting a trial date:

Counsel do not currently have any scheduling conflicts.

15. Service on other parties:

Not applicable at this time.

16. Whether any party wishes a scheduling conference before the Court enters a scheduling order in the case:

At this time, the parties do not anticipate the need for a scheduling conference.

17. List the date(s) that each and every nongovernmental corporate party filed its disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Civil Rule 7.1:

WSOU filed its corporate disclosure statement on November 6, 2020.

F5 filed its respective corporate disclosure statement on January 26, 2021.

DATED this 9th day of March, 2021.

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Christy A. Nelson
Christy A. Nelson